

Common Scenarios of Fair Use Issues: Posting Materials On-Course Management Systems

<http://www.copyright.iupui.edu/fuscenarios.htm>

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The following scenarios encompass common examples of the application of fair use when instructors post materials on On-Course, Angel, or other course management system (CMS). Because fair use seldom offers simple, clean, concise rules--and every situation will have its own set of facts--these scenarios should help instructors make fair-use determinations. Fair use is based on an application of four factors set forth in the Copyright Act. For a further discussion of fair use, see: [Copyright Management Center: Fair Use Issues](#).

Scenario: Journal Articles

Professor would like to post on On-Course a single fact-based journal article which is relevant to the course he teaches. Professor used the same article last year for the same course.

Purpose: The purpose of the use of the journal article is educational, which weighs in favor of fair use.

Nature: The nature of the work is factual, which weighs in favor of fair use.

Amount: A single article from a journal may be considered an entire work by itself, which can tip this factor against fair use. If use of the entire work is necessary for the educational purpose, the amount may be appropriate.

Market Effect: Use in one semester may have only minimal market effects, but repeat use can begin to compound the market harm. At some point, ongoing uses may begin to tip this factor more strongly against fair use. On the other hand, if the particular article is not licensed or marketed for such uses, the harm here will likely be slight at most.

Alternatives: Professor should investigate whether the university library subscribes to a database which includes the desired articles. If so, students should be able to access the articles by linking to the database from On-Course.

Scenario: Newspaper Articles

Professor would like to post on On-Course multiple newspaper articles spanning several weeks from a local paper. The articles are news items and are relevant to the subject of the course. Professor subscribes to the newspaper.

Purpose: The purpose of the use of the news articles is educational, which weighs in favor of fair use.

Nature: The news articles are fact based, which weighs in favor of fair use.

Amount: Posting only single news articles and not the entire newspaper probably weighs in favor of fair use.

Market Effect: Limiting access to the articles to only the students enrolled in the course should tip this factor in favor of fair use. However, the continued use of the same newspaper may begin to tip this factor against fair use.

Alternatives: In this scenario, Professor should investigate whether the university library subscribes to the newspaper or a database which includes the desired articles. If so, students should be able to access the articles by linking to the database from On-Course.

Scenario: Chapters from Novels

Professor would like to post on On-Course several single chapters (some being quite lengthy) from multiple novels for a literature course. Each chapter is relevant to the course. The library owns each novel. Because the chapters are from separate works, the instructor needs to evaluate fair use with respect to each one individually; most often the analysis will be the same.

Purpose: The purpose of the use of the book chapters is educational, which weighs in favor of fair use.

Nature: The law of fair use applies more narrowly to highly creative works, such as novels. The creative nature of novels often weighs against fair use.

Amount: Posting brief excerpts of an entire work may weigh in favor of fair use. Isolated, individual, and short chapters may be satisfactorily brief. However, because of the highly creative nature of novels, and the fact that some chapters are quite lengthy, the professor should consider choosing shorter excerpts if the educational goal for using the material can still be achieved.

Market Effect: Limiting access to the articles to only the students enrolled in the course may tip this factor in favor of fair use.

Alternatives: Professor may want to consider creating either a hardcopy or electronic coursepack by seeking permission from the copyright owners of the materials. If the materials are used semester after semester, Professor or the library should consider purchasing multiple copies of the books to make them available to students each semester. Another possible option would be for Professor to require each student buy a copy of each book, if reasonably available.

Scenario: Workbooks

Professor would like to post on On-Course a copy of an unused, commercially-printed workbook he owns which corresponds to the course he teaches. The workbook is relevant to the course.

Purpose: The purpose of the use of the materials is educational, which weighs in favor of fair use.

Nature: Workbooks are “consumable” materials, which may weigh heavily against fair use. These types of materials are marketed specifically for students such as those enrolled in the course. These materials are meant to be used and replaced regularly and not routinely copied.

Amount: Providing significant excerpts or the entire workbook would weigh against fair use.

Market Effect: Workbooks are created for the educational market and students are the main purchaser of such materials. Providing students with these materials may deeply affect the market for them and therefore may weigh heavily against fair use.

Alternatives: Permission from the copyright owner should be sought for “consumable” materials used. Instructors should also consider having students purchase the workbooks.

Scenario: Poetry

Professor would like to post on On-Course portions of a book of poems he owns that has been out of print for five years. Professor plans only to use portions of the book which are relevant to the course. Professor believes this book to be the best tool for teaching the course.

Purpose: The purpose of the use of the poetry is educational, which weighs in favor of fair use.

Nature: Fair use applies more narrowly to highly creative works such as poems. The nature of these works probably weighs against fair use.

Amount: Limiting the amount of material used to brief excerpts of an entire work weighs in favor of fair use. On the other hand, each poem will probably be treated as an entire work, and excerpts of a single poem may or may not be adequate for educational purposes.

Market Effect: Although the book is out of print (and therefore there is no current market), the copyright owner of the collection or of each poem may decide in the future to re-offer the material for commercial purposes. Also, the copyright owner may be prepared to license the material for copying. These possibilities are “potential” markets. However, limiting access to the articles to only the students enrolled in the course may tip this factor in favor of fair use.

Alternatives: When dealing with out-of-print materials, Professor should keep in mind that the materials may possibly be obtained through other sources available for purchase. The one book in question may not be the only source for the desired poetry.

Scenario: Videotapes

Professor would like to post on On-Course a video recording of a recent television broadcast which is relevant to the course. The show is part of a series aired on network television and broadcast to the public at no charge.

Purpose: The purpose of the use of the television show is educational, which weighs in favor of fair use.

Nature: The law of fair use applies more narrowly to highly creative works such as television shows. This may tip this factor against fair use. On the other hand, if the program is more “factual,” such as a news or current affairs program, this factor may tip towards fair use.

Amount: Professor should limit the portion of the video recording to the amount needed to satisfy the educational purpose.

Market Effect: Limiting access to only the students enrolled in the course may tip this factor in favor of fair use. If the program is available for purchase, this factor will tip more strongly against fair use. Using network television programs which are available to the public at no charge will more likely fall within fair use than the use of a program only available on a cable network for paid subscribers.

Alternatives: Providing one copy of the video recording in the library reserves for students to check out will more likely be a fair use than posting the recording on On-Course. If the program is available for purchase, Professor X should consider placing purchased copies on reserve in the library. Assuming that taping one copy off-air is fair use (which is often true), sharing that one copy of the tape with students should also be lawful.

Contact information: <http://www.copyright.iupui.edu/contact.htm>

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